

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Andreas Eipper et al.

Application No.: 10/587,997

Confirmation No.: 4348

Filed: August 1, 2006

Art Unit: 1796

For: FLUID POLYESTER MOULDING MASSES

Examiner: Lee, Doris L.

REPLY BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

This is a Reply Brief to the Examiner's Answer dated July 25, 2011 under 37 CFR 41.41.

ARGUMENT

The rejection of claims 1-14 under 35 U.S.C. § 103(a) as being unpatentable over Gareiss et al. (U.S. Patent No. 5,712,336) in view of Davis et al. (GB 2,324,797) is respectfully traversed in view of the above-discussed amendments and reasons discussed below.

The Examiner states, at page 11 of the Examiner's Answer, that comparative example 2C has a MVR value of 54.5, which is higher than the MVR value of 34.4 of example 6. Thus, the Examiner concludes, no evidence for unexpected high MVR values has been provided.

Applicants respectfully submit that the comparison between example 6 and example 2C in Table 1 at page 31 of the specification does not take into account that example 6 contains 30% by weight of component C/2, whereas example 2C contains 100% by weight of component A/1. The better comparison to example 6 is comparative example 1C, which also contains 30% by

weight of component C/2. The MVR of 34.4 measured for example 6 is more than twice as big as the MVR value of 15 measured for comparative example 1C.

During the examination of counterpart application EP 1713861 before the European Patent Office, Applicants provided further comparative examples 1C and 2C, which contain Boltorn® H30, a dendritic polymer from Perstorp Corp. The data submitted to the European Patent Office on November 10, 2005 is reproduced below and compared to example 1 from Table 1, page 31, and examples 1, 4, and 7 from Table 4, page 33, of the instant specification. The Table below demonstrates the remarkable and unexpected increase of the values measured for MVR and the flow spiral:

	1C	2C	Ex. 1 from Table 1	Ex. 1 from Table 4	Ex. 4 from Table 4	Ex. 4 from Table 4
A/1	99	97	97	99	99	99
Boltorn® H30	1	3	-	-	-	-
Component B	-	-	3 B/2	1 B/1	1 B/7	1 B/6
MVR at 275 °C, 2.16 kg load	64.2	110	> 250	105	117	144
Flow spiral (260/80°C) 2 mm	43	43.5	81	52	54	61

As seen from the Table above, the MVR value of example 1 from Table 1 is larger than 250, which is more than twice as big as the MVR value of comparative example 2C of the above Table.

Further, as seen from the above Table, a flow improvement of at least 25% can be observed in comparison to the compositions containing the commercial product Boltorn® H30.

The Examiner states, at the bottom of page 12, that Applicants' argument that plasticizers are used in PVC materials is moot because "Davis clearly teaches in the final paragraph on page 15 that plasticizers can be incorporated in thermoplastic compositions." However, Applicants

note that Davis suggests, at page 15, line 23 to page 16, line 7, the forming of hyperbranched polyamides, polyesters, polyureas, and polyurethanes. The passage in Davis relied on by the Examiner does not even discuss possible applications of these hyperbranched polymers. Thus, it is unclear on what basis Davis is considered to use the term “plasticizer” to denote an additive for a thermoplastic polyester. In particular, Davis neither clarifies which hyperbranched polymers are to be used as “reactive plasticizers” nor to which thermoplastic compositions these unspecified hyperbranched polymers are to be added.

At pages 8-9, claims 1-14 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 11/996,489. Further, the Examiner asserts that claims 1-14 are not patentably distinct from claims 1-20 of copending application 11/996,489.

Applicants respectfully submit that this rejection has been obviated by the filing of a Terminal Disclaimer and a Statement under 37 CFR 3.73(b) in copending application 11/996,489 on September 26, 2011.

At pages 9 and 10, claims 1-14 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 11/815,238. Further, the Office Action asserts that claims 1-14 are not patentably distinct from claims 1-20 of copending application 11/815,238.

Applicants respectfully submit that a Terminal Disclaimer and a Statement of Common Ownership have been filed in copending application 11/815,238 on December 30, 2010. Accordingly, this rejection is moot.

CONCLUSION

In view of the above comments and our Appeal Brief, it is abundantly clear that the primary Examiner has erred in the rejection of claims 1-14. Accordingly, it is respectfully requested that the Board reverse the Examiner and allow the rejected claims 1-14.

In view of the forgoing, consideration and allowance are respectfully solicited.

In the event the Examiner believes an additional interview might serve in any way to advance the prosecution of this application, the undersigned is available at the telephone number noted below.

The Office is authorized to charge any necessary fees to Deposit Account No. 03-2775.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 12810-00334-US from which the undersigned is authorized to draw.

Dated: September 26, 2011

Respectfully submitted,

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